



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 9, 1939

Hon. A. M. Pribble
County Attorney
Hills County
Goldthwaite, Texas

Dear Sir:

Opinion No. 0-260
Re: Fees or commissions allowed County
Attorney in delinquent tax suits
on personal property.

Your letter of February 23rd has been received
by this Department, wherein you request an opinion rela-
tive to the following questions:

"1. What fee or commission is the
county attorney entitled to for collecting
delinquent state and county taxes on personal
property by filing suit and obtaining judgments
in the justice courts?"

"2. Is such fee or commission to be
included with the amount of taxes, penalty
and interest in determining the amount sued
for?"

We are unable to find any statutes which pro-
vide for any fee payable to the county attorney and
chargeable against the defendant in a tax suit for col-
lecting taxes on personal property. The only provisions
relative to the subject are found in Article 335 and
Article 7332, as amended, Revised Civil Statutes 1925.

Article 7332 and the material provisions thereof
read as follows:

"....In all cases, the compensation of
said Attorney shall be Two (\$2.00) Dollars
for the first tract and One (\$1.00) Dollar
for each additional tract up to four (4),

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but said fee in no case to exceed Five (\$5.00) Dollars. And provided, that in any suit brought against any individual or corporate owner, all past due taxes for all previous years on such tract or tracts shall be included; and provided, further that where there are several lots in the same addition or subdivision delinquent, belonging to the same owner, all said delinquent lots shall be made the subject of a single suit....

"....Provided, that the fees herein provided for in connection with delinquent tax suits shall constitute the only fees that shall be charged by said officers for preparing, filing, instituting, and prosecuting suits on delinquent taxes and securing collection thereof, and all laws in conflict herewith are hereby repealed...."

Article 335 reads as follows:

"Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law."

It will be seen from the reading of the above provisions of Article 7332, as amended, that the fees

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provided for therein are applicable and pertain only to the collection of taxes upon real estate and such fees allowed for such services are exclusive of all other fees and commissions. It is made the duty of the county or district attorney to represent the State in all suits against delinquent taxpayers and no provision being made for fees or commissions for such services in delinquent tax collections on personal property, it is necessary to consider the Article last above quoted.

This Department has consistently construed Article 335 as allowing the county or district attorney ten per cent commission on all the money collected in the preparation, filing and prosecution of delinquent tax suits against personal property. Such fees, however, would not be taxed as costs against the taxpayers.

It is, therefore, the opinion of this Department that the county or district attorney is allowed the ten per cent commission as provided for in Article 335, Revised Civil Statutes, 1925, on money collected through the filing of delinquent tax suits against personal property. Such commission, however, is not to be included with the amount of taxes, penalty and interest in determining the amount sued for.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Wm. J. R. King
Wm. J. R. King
Assistant

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APPROVED:

Gerald B. Murray
ATTORNEY GENERAL OF TEXAS

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